

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY ZUPPO,	§	
	§	No. 64, 2011
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0101004412
Appellee.	§	

Submitted: February 24, 2011

Decided: March 3, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 3<sup>rd</sup> day of March 2011, it appears to the Court that:

(1) On February 9, 2011, the Court received the appellant's notice of appeal from the Superior Court's December 30, 2010 denial of the appellant's second motion for postconviction relief. On its face, the appeal was untimely filed. Pursuant to Supreme Court Rule 6, a timely notice of appeal from the December 30, 2010 order should have been filed on or before Monday, January 31, 2011.<sup>1</sup>

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<sup>1</sup> See Del. Supr. Ct. R. 6(a)(iii) (providing that an appeal from the denial of postconviction relief must be filed within thirty days after entry upon the docket of the Superior Court judgment or order); Del. Supr. Ct. R. 11(a) (providing in pertinent part that when the last day of the designated period of time is a Saturday the period shall run until the end of the next day the Clerk's office is open).

(2) To invoke this Court’s appellate jurisdiction, a notice of appeal must be received by the Office of the Clerk within the applicable time period.<sup>2</sup> The Court cannot consider an untimely notice of appeal *unless* the appellant can demonstrate that the delay in filing the notice of appeal is attributable to court-related personnel.<sup>3</sup>

(3) On February 9, 2011, the Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing that the appellant show cause why the appeal should not be dismissed as untimely filed. In response to the notice, the appellant, who is incarcerated, asks this Court to excuse the delay, explaining that he mailed the notice of appeal on January 27, 2011, four days prior to the January 31, 2011 filing deadline. The appellant contends that he should not be held responsible for the delay in the Court’s receipt of the notice of appeal because the prison mail system is “out of [his] control.”

(4) At the request of the Court, the appellee filed an answer to the appellant’s response to the notice to show cause. The appellee contends that, under the appellant’s circumstances, the untimeliness of the appeal is not attributable to court-related personnel, and therefore the appeal must be dismissed.

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<sup>2</sup> Del. Supr. Ct. R. 10(a).

<sup>3</sup> *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

(5) The appellee's position is correct. In Delaware, an appellant's incarcerated status does not excuse a failure to comply with the Court's jurisdictional requirement as to time.<sup>4</sup> Prison personnel are not court-related personnel.<sup>5</sup> Consequently, any delay allegedly caused by prison personnel cannot excuse an untimely appeal.

(6) In this case, there is nothing in the record before us indicating that the appellant's failure to file a timely notice of appeal is attributable to court-related personnel. Consequently, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the within appeal is DISMISSED.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>4</sup> "Time is a jurisdictional requirement." *See Carr v. State*, 554 A.2d 778, 779, 780 (Del. 1989) (declining to adopt a separate prison mailbox rule).

<sup>5</sup> *Drummond v. State*, 2010 WL 1463234 (Del. Supr.); *Nelson v. State*, 2004 WL 2297393 (Del. Supr.); *Dickens v. Costello*, 2004 WL 2239710 (Del. Supr.). *Cf. Deputy v. Roy*, 2004 WL 1535479 (Del. Supr.) (dismissing untimely appeal after concluding that "[a]ny delay in prison mail system cannot justify an enlargement of jurisdictional appeal period") (citing *Carr v. State*, 554 A.2d 778, 779 (Del. 1989)).